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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,805	11/07/2002	Gilbert Wolrich	10559-307US1	7118

7590 10/03/2006
Fish & Richardson
225 Franklin Street
Boston, MA 02110-2804

EXAMINER

HUISMAN, DAVID J

ART UNIT	PAPER NUMBER
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2183

DATE MAILED: 10/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/069,805

Applicant(s)

WOLRICH ET AL.

Examiner

David J. Huisman

Art Unit

2183

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 September 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-15 as set forth in the final Office Action (art rejections only).
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Applicant argues the rejection of claim 1 on page 8 of the after-final remarks, in substance that:

"Applicant's independent claim 1 recites "a context branch instruction that, when executed causes a data processing apparatus to: cause an instruction stream to branch to another instruction of the instruction stream associated with a label specified by the context branch instruction based on whether or not a current context number matches a context number specified by the context branch instruction." Thus, applicant's context branch instruction performs the branching operation on the basis of the evaluation of whether the current context number matches the context number specified in the context branch instruction. That evaluation determines whether the instruction will or will not perform the branching operation... Saville's "SWITCH TO P0" instruction causes the processor to unconditionally switch from the current processor to the context whose address in memory is indicated by the content of P0. The "SWITCH TO P0" instruction, however, is not a branching operation that causes a branch to a different instruction in the instruction stream if the condition of the branch is fulfilled, as recited in applicant's claim 1."

While fully considered, this argument has been found non-persuasive by the examiner because applicant is reading the claim too narrowly. Due to the or-clause in the second to last line of the claim, the claim effectively reads as "causing an instruction stream to branch to another instruction of the instruction stream...based on a current context number matching a context number specified by the branch instruction or based on a current context number not matching a context number specified by the branch instruction." If a claim states "A or B" and the prior art only teaches B, then the prior art still anticipates the claim. In this case, the examiner is only concerned with the non-matching portion. That is, Saville has taught "causing an instruction stream to branch to another instruction of the instruction stream...based on a current context number not matching a context number specified by the branch instruction." The reason this is taught is because the specified context number is not the same as the current context number, a branch (flow disruption) occurs in the program code being executed. Regardless if it is an unconditional branch or not, the branch still occurs because the current number does not match the specified number, i.e, the branching is based on wanting to go to as different context.


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